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STATE OF ALABAMA

SEP 25 1989

Honorable Frank H. Riddick
Judge of Probate
Madison County Court House
Huntsville, AL 35801

Probate Judges - Commitment -
Incompetents

If a person charged with a crime in municipal court is in confinement and appears to be insane, commitment proceedings should be instituted under § 15-16-20 and not under the general commitment provisions. The provisions of § 22-52-31 apply to a person with charges pending in municipal court who has been referred to the Department of Mental Health under § 15-16-20.

The opinion to Honorable John M. Karrh, Circuit Judge, 6th Judicial Circuit, under date of October 20, 1987, (88-00018) is modified to the extent that it is in conflict with this opinion.

Dear Judge Riddick:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. Can a person be involuntarily committed through the probate court if there are any charges pending against that person in municipal court?

2. Does Section 22-52-31(b), Code of Alabama 1975, have any application when the person to be committed has charges pending in the municipal court?

FACTS AND ANALYSIS

Your request states:

As Probate Judge of Madison County, I am frequently confronted with the situation of petitions for commitment being filed in this Court where the petitioner is seeking to commit a person who has charges pending against them in municipal court. My policy has been that I would not commit a person under these circumstances. This policy was based, for the most part, on an opinion rendered by the Attorney General's Office, dated June 30, 1981, that was requested by the Honorable Bobby Day, Probate Judge of Morgan County. That opinion states the following:

A person cannot be civilly committed through the Probate Court while charges are pending in another Court.

This policy, as it relates to the municipal court, has been questioned since a significant number of the charges in this court are misdemeanors.

In our opinion to Honorable Bobby Day we stated that, pursuant to Code of Alabama 1975, § 15-16-21, if criminal charges are pending against a person whose sanity is in question, the circuit judge of the county in which such person is confined has the responsibility for instituting an investigation to determine whether the accused should be sent to a state mental facility for evaluation. The commitment procedures to be followed for persons awaiting trial are set forth in §§ 22-52-30, et seq., which are separate from the general civil commitment provisions in §§ 22-52-1 to -17. Therefore, we concluded that the commitment of any person charged with a crime cannot be conducted pursuant to the general commitment provisions. It appears that this opinion needs to be clarified.

There are three Code provisions that authorize courts in Alabama to refer a person to the Alabama Department of Mental Health for a pretrial psychiatric evaluation. These are Code of Alabama 1975, §§ 15-16-20, -21 and -22. Section 15-16-20 relates to whether a defendant should be transferred from jail to a mental facility because he is presently insane. Hopkins v. State, 429 So.2d 1146 (Ala. 1983). This section states:

"If any person other than a minor in confinement, under indictment, for want of bail for good behavior, for keeping the peace or appearing as a witness, in consequence of any summary conviction appears to be insane, the judge of the circuit court of the county where he is confined must institute a careful investigation, call a respectable physician and call other credible witnesses; and, if he deems it necessary, he may call a jury, for which purpose he is empowered to compel attendance of witnesses and jurors. If it is satisfactorily proved that the person is insane, the judge may discharge him from imprisonment and order his safe custody and removal to the Alabama state hospitals, where he must remain until restored to his right mind, and then, if the judge shall have so directed, the superintendent must inform the judge and sheriff, whereupon the person must be remanded to jail and criminal proceedings be resumed, or he must be otherwise discharged." (Emphasis added.)

In an opinion to Honorable John M. Karrh, Circuit Judge, 6th Judicial Circuit, under date of October 20, 1987, (88-00018) this office held that under § 15-16-20 a defendant must be "under indictment" before a court may refer him for psychiatric evaluation. After a further review of § 15-16-20 and the case law interpreting this section, it is our opinion that a defendant need not be under indictment in order to be referred for psychiatric evaluation.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature. The intent should be gathered, if possible, from the language of the statute and the reason and necessity of the statute. Clark v. Houston County Commission, 507 So.2d 902 (Ala. 1987); Shelton v. Wright, 439 So.2d 55 (Ala. 1983).

Cases interpreting § 15-16-20 hold that it grants a circuit judge jurisdiction to institute an investigation as to the sanity of a person only if he is in confinement. Ex parte Garrett, 262 Ala. 25, 76 So.2d 681 (1954). If the person is not in confinement the circuit judge has no jurisdiction. The purpose of this statute is to provide a method whereby a mentally ill person may be transferred to a hospital rather than remain in jail. Ex parte Garrett, Id.

The language of § 15-16-20 indicates that any person who is in confinement (other than a minor) for one of the alternate reasons listed and who appears to be insane may be referred for psychiatric evaluation. "Under indictment" is only one of the reasons listed for being in confinement. The punctuation placed after "under indictment" (a comma) indicates that being under indictment is only one of the alternate reasons a person may be in confinement.

It should also be noted that the 11th Circuit Court of Appeals has held that a mentally ill person should be placed in a facility equipped to care for him and should not be placed in the county jail. Lynch v. Baxley, 744 F.2d 1142 (11th Cir. 1984); opinion to Honorable Sidney Thrash, Sheriff, Elmore County, under date of October 16, 1986. The fact that the constitutional rights of a mentally ill person would be violated if he were confined in a jail demonstrates the necessity of interpreting § 15-16-20 to allow psychiatric referral for persons other than only those under indictment.

Section 15-16-21 states:

"If any person charged with any felony is held in confinement under indictment and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity, such jury to be impaneled from the regular jurors in attendance for the week or from a special venire, as the court may direct. . . ." (Emphasis added.)

This section provides for a jury determination of a defendant's competency to stand trial when the defendant is charged with a felony.

Section 15-16-22 applies only in capital cases and provides a method for determining whether a defendant was insane at the time of the commission of the offense.

Commitment proceedings cannot be instituted under §§ 15-16-21 and -22 for a person charged with a crime in municipal court because a person cannot be charged with a felony in municipal court. This office has held that municipalities do not have the authority to make a felony an offense against the municipality. Opinion to Honorable B. C. Hornady, Mayor, Monroeville, under date of May 9, 1980.

If a person charged with a crime in municipal court is in confinement and appears to be insane, commitment proceedings should be instituted under § 15-16-20 and not under the general commitment provisions.

Section 22-52-31 is a part of the provisions that establish procedures for the civil commitment of persons accused of crimes who have been committed to the custody of the Department of Mental Health under §§ 15-16-20, -21 or -22. Section 22-52-31 states:

"(a) Upon certification by the superintendent of Bryce or Searcy Hospital or any other facility so designated by the commissioner that any person accused of a crime and committed to the custody of the department in one of its facilities has been determined by appropriate members of the medical staffs of said facilities as designated by the superintendent to be unable to attain the capacity to proceed to trial in the foreseeable future, the commissioner or his designee is hereby authorized to petition the judges of probate of Tuscaloosa or Mobile counties or any judge of probate where such facility exists for an order of civil commitment to the department of mental health. All of the subsequent provisions of this article shall apply where the commissioner seeks such order.

"(b) Nothing in this section shall be construed to require any prosecuting attorney of the state, county or municipality to dismiss pending criminal charges against any defendant who has been voluntarily or involuntarily civilly committed because a determination was made that he did not have the capacity to proceed

or continue to trial in the foreseeable future.

"(c) Civil commitment to the custody of the department of mental health shall have the effect of tolling the applicable statute of limitation of the crime for which the defendant is charged; and, once the defendant is released from said custody, the prosecuting attorney shall forthwith reinstate the charges and proceed with the prosecution of the case." (emphasis added.)

This section applies to a person with charges pending in municipal court who has been referred to the Department of Mental Health under § 15-16-20.

CONCLUSION

If a person charged with a crime in municipal court is in confinement and appears to be insane, commitment proceedings should be instituted under § 15-16-20 and not under the general commitment provisions. The provisions of § 22-52-31 apply to a person with charges pending in municipal court who has been referred to the Department of Mental Health under § 15-16-20.

The opinion to Honorable John M. Karrh, Circuit Judge, 6th Judicial Circuit, under date of October 20, 1987, (88-00018) is modified to the extent that it is in conflict with this opinion.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
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By:



BRENDA FLOWERS
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